

WILBUR R. PARSONS

IBLA 83-319

Decided May 5, 1983

Appeal from a decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 11446 and A MC 11448.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to December 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where the claimant inadvertently omits the names of several claims from his affidavit of annual assessment work which

otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Wilbur R. Parsons, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Wilbur R. Parsons appeals the January 7, 1983, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared certain unpatented mining claims in the "P & M" group abandoned and void because no proof of labor or notice of intention to hold the claims was received by BLM prior to December 31, 1980, for that calendar year, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. The appeal relates only to P & M 56 and P & M 100, A MC 11446 and A MC 11448.

The claims had been located in May 1977. The proof of labor submitted to BLM December 8, 1980, listed P & M XXA, A, B, 3, 4, 5, 8, 50, 51 and 53 (A MC 11426, A MC 11427, A MC 11432, A MC 11433, A MC 11434, A MC 11437, A MC 11440, A MC 11441, A MC 11443, and A MC 11452). The proof of labor submitted to BLM December 16, 1981, recited these same mining claims.

Appellant states that title to the P & M 56 and P & M 100, was confirmed in him by judgment of the Arizona Superior Court, Cochise County, on April 22, 1982, in Cause No. 39299, and that he thereafter performed the required assessment work in 1982.

Examination of the case file discloses no proof of labor for the P & M 56 or P & M 100, claims for either 1980 or 1981.

[1] Under section 314 of FLPMA, the owner of a mining claim located after October 21, 1976, must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim invalid and void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2, 3] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim, but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state office, whether proof of labor or notice of intention to hold the claim, in the proper office of BLM. Where, as in this case, the proof of labor did not include P & M 56 and P & M 100 mining claims, there was no discretion under the statute for BLM to determine that those claims had not been abandoned. We recognize that the omission may have been inadvertent, but neither BLM nor this Board had any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford any relief from the statutory consequences. Peter Laczay, 65 IBLA 291 (1982). See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrorey, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Cir. No. 78-46 M (D. Mont. June 19, 1979). A matter of law the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

